IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH PAUSHA 1928

WP(C).No. 33949 of 2006(S)

OA.434/2004 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

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PETITIONER:

1. UNION OF INDIA, REPRESENTED BY
GENERAL MANAGER, SOUTHERN RAILWAY,
HEADQUARTERS OFFICE, PARK TOWN P.O.,
CHENNAI-3.

2. DIVISIONAL PERSONNEL OFFICER,
SOUTHERN RAILWAY, TRIVANDRUM DIVISION,
TRIVANDRUM-14.

3. SENIOR DIVISIONAL ENGINEER,
SOUTHERN RAILWAY, TRIVANDRUM DIVISION,
TRIVANDRUM-14.

BY ADV. SRI.M.C.CHERIAN,SR.SC.,RAILWAYS

RESPONDENTS:

N.CHANDRASEKHARAN,
SENIOR GANGMAN, SECTION ENGINEER'S OFFICE,
PERMANENT WAY, SOUTHERN RAILWAY, KOTTAYAM,
RESIDING AT NITHIN VIHAR, PARAMPUZHA P.O.,
KOTTAYAM-4.

BY /

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

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W.P.(C). NO. 33949 OF 2006

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Dated this the 3rd day of January 2007

JUDGMENT

Abdul Gafoor,J

The challenge is mainly against Ext.P12 and P20 orders of the Central Administrative Tribunal. Ext.P12 is an order dated 05.02.2003. At this distance of time the writ petitioner-Railway cannot assail Ext.P12 order which has attained finality.

2. In Ext.P12, the applicant before the Tribunal staked his claim for promotion to the post of B.T. Checker notified in the year 2001. It was declined on the ground that there were sufficient candidates at that moment in the scale of pay of Rs. 2750-4400. In the absence of candidates with that scale of pay, those with Rs. 2650-4000, like the applicant, could have been considered. The Tribunal considered the matter and held that the petitioner was really qualified to be considered against the vacancies notified, as he had become qualified in the written examination and therefore he was entitled to be considered for promotion subject to passing Viva- voce test, as he was entitled for appointment against one among the B.T. Checker. Even inspite of Ext.P12 judgment the applicant before the Tribunal

below was not promoted. He was informed in Ext.P14 that he did not have minimum requisite qualifying marks of 60% both in Professional ability and in aggregate. Therefore, he was, according to the petitioner, not qualified for selection to the post of B.T. Checker. This was impugned again before the Tribunal. Again the Tribunal considered the aspect and found that it was proceeded earlier that the Viva-voce test was a component of the selection process. But on examining the notification published to fill up the post of B.T. Checker, it was found that the post was an "ex-cadre non-selection posts" to which the qualification required was as follows:

> "1. should have sufficient working knowledge in English to prepare daily reports and ballast journals.
>
> 2. should be liable to writ out reports to S.E.s J.Fs (P.Ways), ADENs on day to day working of BT whenever necessary.
>
> 3. should have an elementary knowledge of Arithmetic and Mensuration to enable him to record stack measurements etc. in the B.T. Journals.
>
> 4. The candidates will have to come out out successful in the written examination."

The Tribunal found that this being a non-selection post viva-voce test was unnecessary. There was no minimum marks to be insisted for such Viva-voce. Accordingly, it was directed that he shall be promoted

within a time frame. There is nothing illegal in that finding. The writ petition is liable to be dismissed.

In order to find out whether it is a selection post or non selection post, the Railway was directed to file an affidavit. The affidavit was filed showing that it was a selection post . Thereupon the applicant substantiated with the help of documents that on earlier occasions also the selection was conducted as a non-selection post. It was on that basis the deponent of the affidavit was directed to pay a cost of Rs.3,000/- in making such false affidavit. It is submitted by the counsel for the writ petitioner- Railway that the Officer is not responsible for the same. Necessarily the cost has to be met by the Railways. With that modifications, the Writ Petition is closed.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

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